

Dr. John Braxton and Dr. Simon Carter, Sole Proprietors, d/b/a Braxton/Carter Community Health Center and Ella J. Nolley. Case 5-CA-21122

April 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On July 23, 1991, the National Labor Relations Board issued an Order adopting, in the absence of exceptions, the decision of the administrative law judge, directing Braxton/Carter Community Health Center, referred to here as Respondent Employer, to make whole certain of its unit employees for loss of earnings and other benefits resulting from their discharges in violation of the National Labor Relations Act. The United States Court of Appeals for the Fourth Circuit, on July 6, 1992, entered its judgment enforcing in full the Order of the Board.

A controversy having arisen over the amount of backpay due the unlawfully discharged employees and a further issue having arisen over the obligation of Dr. John Braxton and Dr. Simon Carter to pay backpay under the Board's Order, on October 30, 1992, the Regional Director for Region 5 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order and that Dr. John Braxton and Dr. Simon Carter are jointly and severally liable to remedy the unfair labor practices of Braxton/Carter Community Health Center because Dr. Braxton and Dr. Carter continued to operate Respondent Employer in basically unchanged form from October 8, 1985, the date Respondent Employer dissolved as a corporate entity, until September 5, 1990, the date Respondent Employer was sold, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents have failed to file an answer.

By letter dated December 1, 1992, the supervisory compliance officer advised the Respondents that unless an appropriate answer was filed by December 8, 1992, summary judgment would be sought. The Respondents filed no answer.

On March 17, 1993, the General Counsel filed with the Board a Motion to Transfer the Case to and Continue Back Pay Proceedings Before the Board and for Summary Judgment, with exhibits attached. On March 22, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause

why the motion should not be granted. The Respondents again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondents shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the unlawfully discharged employees is as stated in the compliance specification and we will order payment by the Respondents to these discharged employees.

ORDER

The National Labor Relations Board orders that the Respondents, Dr. John Braxton and Dr. Simon Carter, Sole Proprietors, d/b/a Braxton/Carter Community Health Center, Baltimore, Maryland, their agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Tammie Boyd	\$6,000
Karen Ellen	6,000
Bernadette Gamble	4,800
Ella Nolley	5,800